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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,830	10/23/2003	John E. Bennett	DE011	9212

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EXAMINER

SPISICH, GEORGE D

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,830

Applicant(s)

BENNETT ET AL.

Examiner

George D. Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-27 is/are allowed.
- 6) ☒ Claim(s) 1-15, 19, 20, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 16-18, 21 and 22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/11/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

Claim 24 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 14. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

It may have been intended for claim 24 to depend from claim 19, but currently claim 24 depends from claim 1 as does claim 14 and claim 14 and 24 are identical in subject matter. Cancellation of claim 24 or changing the dependency of claim 24 to claim 19 is suggested.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is unclear. Examiner suggests using the phrase "wherein there are two anti-tip legs". As the claim currently reads, it sounds as though one of the legs can be made of two legs.

Claim 15 lines 3-4 are unclear. It is unclear to claims "for depressing said anti-tip legs *against said urging* into said ground".

Claims 3,4,5,9,13,14 and 15 recite the limitation "legs" in the body of each claim (in some claims, in multiple places). There is insufficient antecedent basis for this limitation in the claim.

These claims depend from claim 1 where only "one or more anti-tip legs" have been claimed (in lines 3-4). It is improper to then claim "legs" since there has not been a plurality of legs positively claimed. Examiner suggests depending these claims from claim 2 or substituting the phrase "said one or more legs" in place of - - said legs - - in each of the claims depending from claim 1 where "legs" occurs.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3,13,14,19,20, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Kiel (USPN 4,125,269).

Kiel discloses a wheelchair having a wheelchair frame including a seat (16) and a backrest (18) pivotable on the frame between an upright position and a reclined position (see Fig. 2 and 3), a pair of rear wheels (90) journaled to the frame for rotation about a rear wheel axis, and two anti-tip legs (110) attached to the frame and movable between a retracted position and a ground contacting extended position responsive to pivoting movement of the backrest.

The legs are arranged for contacting a ground surface behind the rear wheel axis.

Kiel discloses spring members (80) (shown in Fig. 6) that cooperate with the tilting of the seat and a linkage that extends and retracts anti-tip legs (110) such that the legs are considered spring loaded towards the retracted position. The spring members are also considered to spring load the back rest towards an upright position as the springs resist the seat back when reclined.

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Kiel also discloses left and right detent arms (26) (although it doesn't appear they are shown in the Figures, col. 2, lines 32-34 discloses a pair) connected to the backrest (18) and having forward end located within reach of a person seated in said wheelchair for pivoting the backrest between upright and reclined positions. Although the detent arms are not in front of the wheelchair occupant, all the claims requires is that the detent arms are "within reach" and the detent arms of Kiel are position so that an occupant of the wheelchair could still reach the arms.

Claims 1-3,9,19 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Peek (USPN 5,137,295).

Peek discloses a wheelchair having a wheelchair frame (10) including a seat (24) and a backrest (26) pivotable on the frame between an upright position and a reclined position, a pair of rear wheels (15) journaled to the frame for rotation about a rear wheel axis, and two anti-tip legs (46) attached to the frame and movable between a retracted position and a ground contacting extended position responsive to pivoting movement of the backrest.

The legs are arranged for contacting a ground surface behind the rear wheel axis. The presence of a caster/wheel does not prevent this member from being considered a "leg".

Peek also discloses a mounting plate (34) fastened to each side of the wheelchair frame, a linkage arm (36) pivoted to each mounting plate wherein the back rest (26) is supported on each linkage arm (via element 34) for pivotal movement

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therewith relative to the wheelchair frame and each linkage arm is connected for moving the legs between the retracted position and the extended position responsive to pivoting movement of the backrest.

Claims 1-3,13-15,19 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by White et al. (USPN 6,776,430).

White et al. disclose a wheelchair (see Fig. 10 and 11), having a wheelchair frame (308, 310 etc.) including a seat (300) and a backrest (312) pivotable on the frame between an upright position and a reclined position a pair of rear wheels (320) journaled to the frame for rotation about a rear wheel axis, and two anti-tip legs (324) attached to the frame and movable between a retracted position and a ground contacting extended position responsive to pivoting movement of the backrest.

The legs are arranged for contacting a ground surface behind the rear wheel axis. The presence of a caster/wheel does not prevent this member from being considered a "leg".

White et al. disclose spring members (334, 336) that spring load the legs towards the retracted position. The strut member (340) is a spring that spring loads the backrest toward the upright position. The backrest has a pair of linkage arms (342) connected to the anti-tip legs (via 340) for depressing the anti-tip legs into the ground contacting position and responsive to the reclining movement of the backrest.

Allowable Subject Matter

Claims 25-27 are allowed.

Claims 4-8 and 10-12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 16-18, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Prior Art does not disclose the anti-tip legs mounted for vertical sliding movement or position of detent arms with ends forward of the backrest and in association with arm rests.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Scheulderman (USPN 5,564,512), McLaurin (USPN 4,310,167), Patrick et al. (USPN 6,799,770), Breacain (USPN 3,848,883), Costello et al. (USPN 4,422,660), Mundy et al. (USPN 5,957,474), Kraft et al. (USPN 6,047,979).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George D. Spisich whose telephone number is (703)


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305-6495. The examiner can normally be reached on Monday-Friday 9:30 to 7:00 except alt. Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

George D. Spisich
March 3, 2005



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